

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

BELLUR G. SHIVA PRASAD,

Plaintiff,

Case No. 3:15-cv-150

v.

A.O. SMITH ELECTRICAL
PRODUCTS CO.,

District Judge Walter H. Rice
Magistrate Judge Michael J. Newman

Defendant.

ORDER AND ENTRY: (1) GRANTING *PRO SE* PLAINTIFF'S MOTION TO WITHDRAW HIS MOTION TO AUTHORIZE AND ISSUE A SUBPOENA (DOC. 72); (2) DENYING AS MOOT *PRO SE* PLAINTIFF'S MOTION TO AUTHORIZE AND ISSUE A SUBPOENA (DOC. 71); AND (3) GRANTING IN PART AND DENYING IN PART *PRO SE* PLAINTIFF'S AMENDED MOTION TO AUTHORIZE AND ISSUE A SUBPOENA (DOC. 72)

This civil case is before the Court on *pro se* Plaintiff's amended motion for an order authorizing issuance of a subpoena directed to Lloyd Shoemaker to appear for deposition on February 26, 2016. Doc. 72.¹ *Pro se* Plaintiff attaches what he purports to be the subpoena he proposes be issued to Mr. Shoemaker. Doc. 72 at PageID 284. Because the subpoena *pro se* Plaintiff requests be issued does not comply with all of the requirements of Rule 45, the undersigned **DENIES** issuance of that document (doc. 72 at PageID 284).

The Court, however, in the interest of justice, **GRANTS** *pro se* Plaintiff's request for issuance of a subpoena provided he completes the required information on the proper subpoena form² and delivers the completed form to the Clerk's Office for issuance. The undersigned also

¹ *Pro se* Plaintiff filed an earlier motion for authorization and approval of a subpoena (doc. 71), which he moves to withdraw. For good cause shown, the Court **GRANTS** the motion to withdraw (doc. 72) and **DENIES** the original motion to authorize (doc. 71) as moot.

² This subpoena form can be found at <http://www.uscourts.gov/forms/notice-lawsuit-summons-subpoena/subpoena-testify-deposition-civil-action>, and is attached to this Order.

advises *pro se* Plaintiff that, under Rule 45(b)(1), he must tender, by check addressed to the witness, the appropriate witness fee and reasonable mileage to be served along with the subpoena. *See* Fed. R. Civ. P. 45(b)(1).³

IT IS SO ORDERED.

Date: February 19, 2016

s/ Michael J. Newman
Michael J. Newman
United States Magistrate Judge

³ Service of a subpoena is governed by Rule 45(b) which states, “[s]erving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person’s attendance, tendering the fees for 1 day’s attendance and the mileage allowed by law.” Fed. R. Civ. P. 45(b)(1); *see also* 28 U.S.C. § 1821(a)(1) (requiring that “a witness in attendance . . . before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall be paid the fees and allowances provided by this section”). Pursuant to 28 U.S.C. § 1821(b), “[a] witness shall be paid an attendance fee of \$40 per day for each day’s attendance.” Consistently, the fee schedule posted by this Court provides for a \$40 per day witness fee. *See* United States District Court - Southern District of Ohio, <http://www.ohsd.uscourts.gov/court-fee-schedule-and-payment-information> (last visited on Feb. 16, 2016). The mileage rate per mile is also listed on the Court’s website. *Id.*